

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

PROMISSORY NOTE

\$ _____, 2013

Whereas the undersigned parties {"Parties"} REBUILD DURHAM, INC. ("Borrower") and CITY OF DURHAM ("City") acknowledge that they executed a Promissory Note dated on or about _____ ("Original Promissory Note"), in the amount of \$ _____, related to the purchase and/or rehabilitation of the property known as 2507 White Oak Avenue(the "Property"; and

Whereas the parties acknowledge that said Original Promissory Note has been lost or misplaced;

Now therefore, in exchange for mutual consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree to replace the Original Promissory Note, modifying it in accordance with the Modification Agreement dated _____. Said replacement Promissory Note is as follows:

FOR VALUE RECEIVED, the undersigned, REBUILD DURHAM, INC., a North Carolina nonprofit corporation the mailing address of which is P.O. Box 722, Durham, North Carolina 27702-0722 ("Borrower") promises to pay to the order of the CITY OF DURHAM, North Carolina ("City"), at its offices located at 101 City Hall Plaza, Durham, North Carolina 27701 or at such other place as the City may designate in writing, the principal sum of \$ _____ as was advanced by the City pursuant to the Loan Agreement dated August 3, 2000, and as amended on August 15, 2003, August 3, 2006 and October 16, 2007, between the Borrower and the City or any modification thereof (the "Loan Agreement") and all additions to said principal as provided herein or therein, (the "Loan"). Principal and interest shall be due and payable as hereinafter provided.

1. Term of the Loan. The period of time from the provision by the City to the Borrower of the principal sum of \$ _____ **until the date that the Property is sold or transferred.**
2. Payments: One payment of principal shall be due upon the sale or transfer of the Property. No interest shall be charged or accrue to the loan amount.
3. Prepayment. The Borrower may prepay the indebtedness evidenced by this Note in whole or in part at any time without any prepayment penalty or fee. The City requires that any

partial prepayments be made on the first day of the month and that such partial prepayments be in the minimum amount of \$5,000 or multiples thereof.

6. Related Documents. This Note is secured by a Deed of Trust dated _____ (the "Deed of Trust") executed by the Borrower conveying the Property located in Durham, North Carolina. This Note, evidences the Loan made by the City to the Borrower pursuant to the Loan Agreement. The Loan Agreement and the Deed of Trust grant the City certain rights to accelerate the indebtedness due hereunder because of the Borrower's default hereunder or thereunder and provide for various remedies to the City in the event the Borrower defaults.
7. Default. If there shall occur an Event of Default under the Loan Agreement, Deed of Trust, or any other Loan Documents then, or at any time thereafter: (a) the entire principal balance outstanding hereunder, shall, at the City's option and without notice to the Borrower, become immediately due and payable; and (b) the City shall be entitled to exercise any rights or remedies that it may have under the Deed of Trust, the Loan Agreement or other Loan Documents, or such other rights or remedies as may be provided by law or equity. The City may exercise the option to accelerate at any time during any such uncured default, regardless of any prior forbearance, and the acceptance of one or more installments from any person thereafter shall not constitute a waiver of the City's option.
8. Default Rate. Subsequent to the occurrence of a default hereunder or of an Event of Default under the Loan Agreement, the Deed of Trust or any other Loan Documents, and continuing until the City has accelerated the due date of the principal hereof because of such default, until the total principal and accrued interest shall have been fully paid, interest on the unpaid principal balance hereof shall accrue at the Default Rate. The Default Rate shall be ten percent (10%) per annum.
9. Costs and Expenses. The Borrower agrees to pay immediately upon the City's demand therefore all reasonable costs and expenses incurred at any time by the City, including without limitation, reasonable attorneys' fees, in connection with collecting the indebtedness due hereunder, enforcing any of its rights and remedies under the Loan Agreement, the Deed of Trust or any other Loan Documents. Without limiting other situations in which the City may properly incur such reimbursable costs and expenses, the City's reasonable costs and expenses incurred in each of the following circumstances shall be included within this obligation: (i) if after any default described in Paragraph 6 hereof, the City employs an attorney to collect the indebtedness due hereunder or to enforce any of its rights or remedies under the Loan Agreement, the Deed of Trust, or the Assignment of Rents of even date herewith from the Borrower to the City; (ii) if the City finds it necessary or desirable upon any such default to obtain the services or advice of its attorneys with regard to the collection of the indebtedness due hereunder or the enforcement of its rights or remedies regardless of whether an actual collection action is filed or the indebtedness accelerated; or (iii) if the City

seeks to have the property encumbered by the Deed of Trust abandoned by any estate in bankruptcy or attempts to have any stay or injunction prohibiting the enforcement or collection of this Note, prohibiting foreclosure of the Deed of Trust, or the enforcement of the City's rights or remedies lifted by any bankruptcy or other court, and any subsequent proceedings or appeals from any order or judgment entered in any such proceeding. In addition, if the City shall be made a party to or shall intervene in any action or proceeding, whether in court or before any governmental agency, affecting the property encumbered by the Deed of Trust or the title thereto or the City's lien thereon, including without limitation, any condemnation proceeding, the City shall be reimbursed by the Borrower immediately upon demand for all costs, reasonable charges and attorneys' fees incurred by the City in any such case and the payment of all such costs and expenses shall be secured by the Deed of Trust. The term "reasonable attorneys' fees" shall include attorneys' fees incurred by the City whether or not suit is brought and if suit is brought, shall include attorneys' fees at trial and on appeal. The amount of such reasonable attorneys' fees shall be determined on the basis of actual time expended and services actually performed by such attorneys and shall not exceed the amount established by the statutory presumption contained in N.C.G.S. §6-21-2.

10. Waiver. All parties liable for payment of the indebtedness due hereunder, whether accommodation makers, sureties, endorser, guarantors, or other parties, hereby waive presentment, demand, protest, notice or protest, nonpayment, dishonor and acceleration of maturity and agree that the time for payment of this Note may be extended from time to time, that this Note may be renewed from time to time, and that any collateral that secures the payment of this Note may be released, all without notice to them and without affecting, in any manner, their liability for payment of this Note.
11. No Personal Liability. Except as provided in this section, neither the Borrower, any of the constituent general or limited partners of the Borrower, nor any of their officers or employees, shall have personal liability for any obligation under this Note or other Loan Documents.

Without regard to and notwithstanding any contrary provisions which may be in the Loan Documents, the Borrower and its general partners shall be fully and personally liable, jointly and severally, to the representative of the City and the City for any loss, cost, expense or liability of the City arising or resulting from:

- (a) The Borrower's failure to comply completely and on a timely basis with any covenant or warranty contained in the Loan Documents relating to security deposits;
- (b) The costs of the City's enforcement of the Loan Documents against the Borrower, including but not limited to, attorney's fees;

- (c) Any rents collected by the Grantor more than one month in advance; and for any and for all rents collected by the Borrower after the Borrower has received notice of the occurrence of an event of Default from the City;
 - (d) The Borrower's failure to pay when due any real estate tax constituting a lien on the Property, or to maintain insurance required to be maintained under the Deed of Trust; and
 - (e) The Borrower's failure to comply with completely with any representation, covenant, warranty or provision contained in the Loan Documents regarding environmental laws or hazardous, toxic or other environmentally regulated materials, wastes or substances, and the presence of hazardous, toxic, or other environmentally regulated materials wastes or substances on the Property, whether or not caused by or within the control of the Borrower, including but not limited to, the obligations, requirements and provisions set forth in the Deed of Trust.
12. Governing Law. This Note shall be interpreted, construed and enforced according to the laws of the State of North Carolina.
13. Captions and References. The captions of the paragraphs in this Note are for the purpose of convenience only, and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

IN WITNESS WHEREOF, Borrower has duly executed this Note under seal on the date first above written.

BORROWER: REBUILD DURHAM, INC.

BY: _____
Stancil M. Clark, President

ATTEST:

_____ [SEAL]
Secretary

NORTH CAROLINA
DURHAMCOUNTY

ACKNOWLEDGMENT BY CORPORATION

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day and stated that he is the Treasurer/Secretary of Rebuild Durham, Inc., a North Carolina nonprofit corporation, and that by authority duly given and as the act of the corporation, the foregoing agreement with the City of Durham was signed in its name by its President, Stancil M. Clark, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the _____ day of _____, 2013.

My commission expires:

Notary Public